

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 6797

IN THE MATTER OF:

Served September 3, 2002

Application of EXECUTIVE COACH, )  
LTD., WMATC No. 177, to Merge )  
With EXECUTIVE SEDAN MANAGEMENT )  
SERVICES, INC., Trading as )  
WASHINGTON CAR & DRIVER, WMATC )  
No. 265, and for Temporary Approval)

Case No. AP-2002-75

By application accepted for filing June 12, 2002, applicant, Executive Coach, Ltd., WMATC Carrier No. 177, seeks Commission approval of a merger with Executive Sedan Management Services, Inc., trading as Washington Car & Driver, WMATC No. 265. Commission records show that both carriers are controlled by the same president.<sup>1</sup>

Applicant further requests that the Commission grant temporary approval of applicant's use of Carrier No. 265's assets until such time as the merger is approved.

Notice of the application was published by the Commission in Order No. 6715 on June 24, 2002, and by applicant in a newspaper of general circulation in the Metropolitan District on July 2, 2002. The application is unopposed.

While this application was pending, we revoked Certificate No. 265 for the willful failure of Executive Sedan Management Services, Inc., to comply with the Commission's insurance requirements.<sup>2</sup>

**I. MERGER APPROVAL**

Under Article XI, Section 11(a), and Article XII, Section 3, Subsections (a)(ii) and (c), of the Compact, the Commission may approve the merger of a carrier with a WMATC carrier if the Commission finds the merger to be in the public interest. The public interest analysis focuses on the applicant's fitness, the resulting competitive balance and the interests of affected employees.<sup>3</sup>

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<sup>1</sup> In re Executive Sedan Mgmt. Servs., Inc., t/a Washington Car & Driver, No. AP-94-26, Order No. 4354 (Aug. 1, 1994).

<sup>2</sup> In re Executive Sedan Mgmt. Servs., Inc., t/a Washington Car & Driver, No. MP-02-35, Order No. 6707 (June 19, 2002).

<sup>3</sup> Act of Sept. 15, 1960, Pub. L. No. 86-794, § 3, 74 Stat. 1031, 1050 (1960) (codified at DC Code Ann. § 1-2414); In re Laidlaw Transit, Inc., & National School Bus Serv., Inc., No. AP-97-08, Order No. 5050 (Mar. 26, 1997); In re Cavalier Transp. Co., Inc., t/a Tourtime America, Ltd. & Tourtime America Motorcoach, Ltd., No. AP-96-21, Order No. 4926 (Sept. 12, 1996).

Competition and the effect on employees are not at issue in this case. A transfer of assets from one member of a controlled family to another does not increase the controlling party's market share and thus causes no concern.<sup>4</sup> Further, the application avers there will be no impact on employees. Fitness is an issue, however.

As an existing WMATC carrier, applicant is entitled to a presumption of fitness.<sup>5</sup> That presumption is diminished by the failure of applicant to obtain Commission approval of the merger beforehand.

According to the application, the merger took place September 30, 2000. Records obtained from the Taxpayer Services Division of the Maryland Department of Assessments and Taxation show that articles of merger were filed December 6, 2000. The annual reports for 2000 filed by Carrier Nos. 177 and 265 both falsely state that no merger occurred that year. Applicant did not inform the Commission of the merger until this year when the insurance certificate for Carrier No. 265 expired.

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.<sup>6</sup>

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>7</sup> The term "willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard whether or not one has the right so to act.<sup>8</sup>

We will assess a forfeiture of \$250 against applicant for knowingly and willfully merging with Carrier No. 265 without first obtaining Commission approval.<sup>9</sup> We will assess a forfeiture of \$200 against applicant and its president for knowingly and willfully filing false annual reports for the year 2000.<sup>10</sup>

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<sup>4</sup> In re Mobile Care Specialty Transportation, Inc., t/a Mobile Care, & Ironsides Transport, Inc., & Mobile Care, Ltd., No. AP-01-10, Order No. 6178 (Apr. 9, 2001).

<sup>5</sup> In re Old Town Trolley Tours of Wash., Inc., & D.C. Ducks, Inc., No. AP-96-44, Order No. 4932 (Sept. 17, 1996); In re Regency Servs., Inc., & Carey Limo. D.C., Inc., No. AP-95-39, Order No. 4689 (Nov. 2, 1995); In re Carey Limo. D.C., Inc., & ADV Int'l Corp., t/a Moran Limo. Serv., No. AP-94-53, Order No. 4499 (Feb. 16, 1995).

<sup>6</sup> Compact, tit. II, art. XIII, § 6(f)(i).

<sup>7</sup> In re Junior's Enterprises, Inc., No. MP-01-103, Order No. 6549 (Feb. 21, 2002).

<sup>8</sup> Id.

<sup>9</sup> See id. (assessing \$250 for unlawful transfer of certificate of authority to carrier's directors).

<sup>10</sup> Cf., In re Failure to File Annual Report, No. MP-01-76, Order No. 6358 (Sept. 18, 2001) (assessing \$100 for failing to file 2001 annual report).

In consideration of the foregoing, we will approve the merger as consistent with the public interest, subject to payment of the assessed forfeitures.<sup>11</sup>

## II. TEMPORARY APPROVAL

The Commission may grant temporary approval under Article XII, Section 3(d), without a hearing or other proceeding up to a maximum of 180 consecutive days if the Commission determines that grant to be consistent with the public interest. The public interest analysis under Section 3(d) includes an assessment of whether denial of temporary approval would cause a diminution in the value or utility of the subject assets.<sup>12</sup>

Examination of the 2001 annual report filed for Carrier No. 265 and the application in this proceeding reveals that applicant acquired three six-passenger Lincoln town cars from Carrier No. 265. Applicant's certificate of authority permits applicant to operate such vehicles. Applicant's tariff contains rates for service in such vehicles. Applicant's president has verified in connection with the revocation of Certificate No. 265 that the identification required by Regulation No. 61 has been removed from those vehicles. Applicant has a waiver to operate such vehicles without the markings required by Regulation No. 61. Applicant has sufficient insurance to operate such vehicles.

The Commission has granted temporary approval in the past where, as here, the transferor no longer controls any vehicles and the transferee has sufficient WMATC authority to operate them.<sup>13</sup> There is no utility in having vehicles sit idle if the transferee is prepared to use them in operations authorized by its certificate of authority.<sup>14</sup>

Accordingly, we shall grant temporary approval of applicant's use of Carrier No. 265's assets until such time as Certificate No. 177 is reissued, but not for more than 180 days.

### THEREFORE, IT IS ORDERED:

1. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 177 shall be reissued to Executive Coach, Ltd., 4900 Nicholson Court, Kensington, MD 20895.

2. That applicant is hereby directed to file the following documents within thirty days: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) a vehicle list stating the year, make, model, serial number, fleet number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) a copy of the vehicle registration card, and a lease as required

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<sup>11</sup> See Order No. 4499 (same outcome).

<sup>12</sup> Order No. 4932; Order No. 4689.

<sup>13</sup> E.g., Order No. 6178; Order No. 4932; Order No. 4689.

<sup>14</sup> In re Blue Lines, Inc., & All About Town, Inc., No. AP-90-33, Order No. 3541 (Aug. 16, 1990), aff'd on reconsideration, Order No. 3556 (Sept. 17, 1990).

by Commission Regulation No. 62 if transferee is not the registered owner, for each vehicle to be used in revenue operations; (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia; and (f) a notarized affidavit of identification of vehicles pursuant to Commission Regulation No. 61.

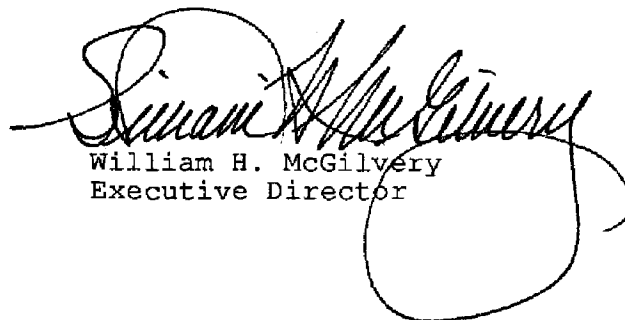
3. That the Commission hereby assesses civil forfeitures against applicant and applicant's president, Lee Barnes, jointly and severally, in the combined amount of \$450 for knowing and willful violations of Article XII, Section 3, of the Compact and the oath in the 2000 annual reports for Carriers Nos. 177 and 265.

4. That applicant and applicant's president, Lee Barnes, are hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashiers check, the sum of four hundred fifty dollars (\$450).

5. That applicant is hereby granted temporary approval to operate the assets of Carrier No. 265 until such time as Certificate No. 177 is reissued, but not for more than 180 days.

6. That the approval of merger herein shall be void and the application shall stand denied upon applicant's failure to timely satisfy the conditions of reissuance prescribed herein.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER, LIGON, AND MILLER:



William H. McGilvery  
Executive Director